

1 SCOTT J. SAGARIA (BAR # 217981)
2 ELLIOT W. GALE (BAR #263326)
3 JOE B. ANGELO (BAR #268542)
4 SCOTT M. JOHNSON (BAR #287182)
5 **SAGARIA LAW, P.C.**
6 2033 Gateway Place, 5th Floor
San Jose, CA 95110
408-279-2288 ph
408-279-2299 fax

7 Attorneys for Plaintiff

8 UNITED STATES DISTRICT COURT

9
10 NORTHERN DISTRICT OF CALIFORNIA – SAN JOSE DIVISION

11 LACY ROSE,

CASE NO.

12 Plaintiff,

13 COMPLAINT FOR DAMAGES:

14 v.
15 Equifax, Inc.; TransUnion, LLC; First Data
16 Merchant Services, LLC; TD Bank USA,
17 National Association and DOES 1 through
100 inclusive,

1. Violation of Fair Credit Reporting Act;
2. Violation of California Consumer Credit
Reporting Agencies Act;

18 Defendants.

19 COMES NOW Plaintiff LACY ROSE, an individual, based on information and belief, to allege
20 as follows:

21 **INTRODUCTION**

22 1. This case arises under the Fair Credit Reporting Act, 15 U.S.C. § 1681s-2(b) and the
23 California Consumer Credit Reporting Agencies Act, California Civil Code
24 §1785.25(a). Plaintiff seeks redress for the unlawful and deceptive practices committed
25 by the Defendants in connection with their inaccurate, misleading, or incomplete
26 reporting of Plaintiff's debt included in Plaintiff's Chapter 13 bankruptcy.
27 2. The United States Congress has found the banking system is dependent upon fair and
28 accurate credit reporting. Inaccurate credit reports directly impair the efficiency of the

1 banking system, and unfair credit reporting methods undermine the public confidence,
2 which is essential to the continued functioning of the banking system.

3 3. There exists today in the United States a pervasive and fundamental misunderstanding
4 about the long term impact filing a consumer bankruptcy has on a consumer's credit
5 worthiness. Specifically, many consumers believe that because a bankruptcy can be
6 reported on their credit report for ten years their credit worthiness will be ruined for the
7 same length of time. This is not true.

8 4. The *majority* of consumer Debtors who file consumer bankruptcy do so to *raise* their
9 FICO Score and remedy their poor credit worthiness.

10 5. It is entirely possible for consumer Debtors to have over a 700 FICO Score within as
11 little as 12 months after filing a consumer bankruptcy (Chapter 7 or Chapter 13).

12 6. Creditors and lending institutions are aware of the misconception that filing a consumer
13 bankruptcy destroys a consumer's credit worthiness for ten years.

14 7. In an effort to perpetuate the aforementioned bankruptcy myth, creditors intentionally
15 and routinely ignore credit reporting industry standards for accurately reporting
16 bankruptcies and debts included in those bankruptcies in an effort to keep consumers'
17 credit scores low and their interest rates high.

18 8. Creditors know that by deviating from recognized credit reporting standards consumers
19 will have difficulty raising their credit scores and improving their credit worthiness.

20 9. These credit reporting issues are most prevalent in Chapter 13 bankruptcy filings.

21 10. Consequently, in the United States today it is objectively worse for consumers' credit
22 worthiness to file Chapter 13 and pay back some or all of their debt, as opposed to
23 filing Chapter 7 liquidation where Creditors generally receive nothing.

24 11. This was not the intent of Congress when enacting the Fair Credit Reporting Act and
25 the Bankruptcy Abuse Prevention and Consumer Protection Act.

26 **JURISDICTION & VENUE**

27 12. Plaintiff re-alleges and incorporates herein by this reference the allegations in each and
28 every paragraph above, fully set forth herein.

13. This Court has jurisdiction under 28 U.S.C. §§ 1331, 1337, and 1367, and 15 U.S.C. §

14. This venue is proper pursuant to 28 U.S.C. §1391(b).

GENERAL ALLEGATIONS

15. Plaintiff alleges that each and every defendant data furnisher was included in Plaintiff's Chapter 13 bankruptcy filing.

16. Plaintiff alleges that each and every Defendant is familiar with credit reporting industry standards and subscribes thereto.

17. Plaintiff alleges that each and every Defendant understands that deviation from credit reporting industry standards can and often does result in denial of credit, higher interest rates, and prompts those making credit decisions to draw a more negative inference from the reported data than if the Defendant reported in accordance with the recognized industry standard.

18. Plaintiff alleges that all actions alleged herein by Defendants were done knowingly, intentionally, and in reckless disregard for credit reporting industry standards in an attempt to purposefully undermine Plaintiff's ability to reorganize and repair Plaintiff's FICO Score.

19. In the alternative Plaintiff alleges that each and every Defendant's actions was the result of reckless policies and procedures that inevitably led to inaccurate, misleading, or incomplete credit reporting.

FICO, Inc.

20. FICO is a leading analytics software company with its principal headquarters located in San Jose California. FICO has over 130 patents related to their analytics and decision management technology, and regularly uses mathematical algorithms to predict consumer behavior including credit risk.

21. The FICO Score has become the standard measure of consumer credit risk in the United States and is used in ninety percent of lending decisions.

22. A FICO score consists of a three-digit number summarizing a consumer's credit risk or likelihood to repay a loan. FICO periodically updates its scoring models resulting in multiple FICO Score versions.

1 23. Base FICO Scores range from 300 to 850, while industry-specific FICO Scores range
2 from 250-900. A higher FICO Score demonstrates lower credit risk or less likelihood of
3 default.

4 24. Different lenders use different versions of FICO Scores when evaluating a consumer's
5 credit worthiness.

6 25. There are 28 FICO Scores that are commonly used by lenders.

7 26. A consumer's FICO Score is calculated based solely on information in consumer credit
8 reports maintained at credit reporting agencies (CRAs).

9 27. The three largest CRAs are Experian Information Solutions, Inc.; Equifax, Inc. and
Transunion, LLC.

10 28. FICO does not control what information is provided on a consumer's credit report.
Instead, the scoring models or algorithms are based on the premise that information
provided by the CRAs is accurate and complies with credit reporting industry
standards.

11 29. There are five key factors that a FICO Score considers: 1) Payment History 2) Amount
12 of Debt 3) Length of Credit History 4) New Credit and 5) Credit Mix.

13 30. Each of the five factors is weighted differently by FICO.

14 31. 35% of a consumer's FICO Score relates to payment history, 30% relates to the amount
15 of debt, 15% relates to the length of credit history, 10% relates to new credit, and the
16 last 10% relates to a consumer's credit mix or the different types of debts reported.

17 32. Payment history refers to whether a consumer has paid their bills in the past, on time,
18 late or missed payments. The more severe, recent, and frequent the late payment
19 information, the greater the impact on a FICO Score. Public record items such as
20 bankruptcy, foreclosure, judgments, and wage garnishments are also considered part of
21 a consumer's payment history.

22 33. In factoring the severity of delinquent payments a FICO Score considers how late the
23 payment continues to be, how much is owed, how recently this occurred, and how
24 many delinquent accounts exist.

25 34. Once a delinquent account has been remedied the longer the account stays current the
26 more a consumer's FICO Score should increase.

27
28

1 35. FICO Scores are entirely dependent upon information provided by data furnishers
2 (DFs) to CRAs.

3 36. The FICO scoring formula treats both Chapter 7 and Chapter 13 Bankruptcies similarly
4 in terms of their impact on one's FICO Score. Specifically, both Chapters have the
5 same level of severity with respect to their FICO Score and for both, FICO uses the
6 FILING DATE to determine how long ago the bankruptcy took place.

7 **Metro 2**

8 37. The Consumer Data Industry Association is an international trade association
9 representing the consumer credit, mortgage reporting, employment and tenant screening
10 and collection service industries.

11 38. The credit reporting industry has adopted a standard electronic data reporting format
12 called the Metro 2 format. The Metro 2 format was developed by the CDIA in an effort
13 to universally report debts in a particular manner that is understood to be the most
14 accurate way in which to report a debt. Specifically, Metro 2 format was designed to
15 allow reporting of the most accurate and complete information on consumer's credit
16 history.

17 39. The CDIA's Metro 2 format is the credit reporting industry standard for accurate credit
18 reporting.

19 40. The credit reporting industry at large depends upon Metro 2 and the CDIA's
20 recommendations for reporting debt accurately.

21 41. The CDIA is *The* expert on accurate credit reporting. In support of this allegation
22 Plaintiff avers the following:

23 a. The CDIA offers a FCRA certificate program for all CRAs.
24 b. The CDIA offers a FCRA awareness program for all CRAs.
25 c. The CDIA offers a FCRA Certificate program for DFs.
26 d. The CDIA offers a FCRA awareness program for DFs.
27 e. The CDIA offers a Metro 2 Learning system to provide detailed instructions on
28 the use of Metro 2 format to ensure understanding of the reporting guidelines
for each field of the Metro 2 Format as well as the relationship between multiple
fields.

- f. The CDIA hosts workshops developed and authorized by Equifax, Experian, Innovis, and Transunion.
- g. The CDIA developed a credit reporting resource guide for accurately reporting credit.

42. The CDIA's Metro 2 is accepted by all CRAs.

43. The credit reporting accepted industry standards for reporting metro 2 accurately are found in the CDIA's credit reporting resource guide (CRRG).

44. The CRRG outlines the industry standards for most accurately reporting debts using Metro 2.

45. The CRRG is not readily available to the public. It can be purchased online for \$229.45.

46. Even if a buyer is ready willing and able to pay for the CRRG, the CDIA will NOT grant access to the guide unless the buyer represents an organization included in the Metro 2 Access Policy.

47. When FICO calculates credit scores the algorithms use Metro 2 information based on industry standards established by the CDIA.

48. The algorithms used by FICO in determining a consumer's credit score are premised on the Metro 2 data received comporting with the CDIA's recommendations for accurate credit reporting.

49. If the Metro 2 data received by FICO deviates from industry standards an inaccurate or incorrect FICO Score results. If the resulting FICO Score is lower a consumer will be considered a higher credit risk resulting in less favorable lending terms.

e-OSCAR

50. E-OSCAR is the web based Metro 2 compliant system developed by Experian Information Solutions, Inc.; Equifax, Inc.; TransUnion, LLC and Innovis that enables DFs and CRAs to create and respond to consumer credit disputes.
51. When a consumer sends a dispute letter to a CRA the CRA then sends an automated credit dispute verification (ACDV) via e-Oscar to the DF.
52. The ACDV contains within it Metro 2 codes next to certain data fields associated with a credit file e.g. “Account Type” “07” (07 in Metro 2 refers to a Charge Account).

Bankruptcy Credit Reporting Industry Standards & Consumer Information Indicator

53. When a consumer files bankruptcy certain credit reporting industry standards exist.
54. Certain Metro 2 data is regularly expected and calculated by FICO when determining a consumer's credit worthiness.
55. The Consumer Information Indicator (CII) is a critical field in the Metro 2 Format that indicates a special condition that applies to a specific consumer.
56. Under Metro 2 the CII must be reported only on the consumer to whom the information applies.
57. It is the credit reporting industry standard to report a very specific CII upon the filing of a consumer bankruptcy.
58. In the consumer bankruptcy context CII Metro 2 Code "A" denotes that a petition for Chapter 7 has been filed, is active, but no discharge has been entered.
59. CII Metro 2 Code "D" indicates that a Chapter 13 petition has been filed, is active, but no discharge entered. This is usually translated on a consumer credit report as "Wage Earner Plan" or "WEP" in the "Account Status" portion of a trade line. Such reporting alerts any potential lender that the account is no longer in a collectable status but is being handled by a Chapter 13 trustee.
60. The CII Metro 2 Code "Z" indicates that a bankruptcy petition has been filed but the chapter is undesignated/unknown.
61. The CII Metro 2 Code "E" denotes that a Chapter 7 bankruptcy has been discharged.
62. The CII Metro 2 Code "H" denotes that a Chapter 13 bankruptcy has been discharged.
63. The CII field is a critical field for consumers and directly relates to and impacts a consumer's credit worthiness.
64. The lack of a CII reported makes it appear that a consumer has not addressed outstanding debt obligations through the bankruptcy process.
65. The lack of a CII reported also suggests that creditors are free to collect against a consumer as an individual or that no stay exists to prevent *in personam* collection activity.
66. Failure to report the correct CII indicator will prompt those making credit decisions to draw a more negative inference regarding a consumer's credit worthiness.

- 1 67. Under the Fair Credit Reporting Act a bankruptcy can be reported for ten years.
- 2 68. The ten-year rule for reporting runs from the date the bankruptcy was *filed*.
- 3 69. A consumer's FICO Score is directly related to the date on which a petition is filed and
4 acknowledged.
- 5 70. The more time that has passed since the filing of the bankruptcy, the less negative
6 impact the bankruptcy will have on a consumer's FICO Score.
- 7 71. Failure to reference the bankruptcy filing (CII field) and or the correct petition date
8 shall result in a lower FICO Score resulting in those making credit decisions to draw a
9 more negative inference regarding a consumer's credit worthiness.

**9 Pre Confirmation Credit Reporting Standards Regarding Balances and
10 Ongoing Payments When All Borrowers File Chapter 13**

- 11 72. Certain credit reporting standards exist on how to accurately and completely report
12 balances on consumer debts pre plan confirmation.
- 13 73. Pre confirmation the accepted credit reporting standard for accurately and completely
14 reporting a balance included in a Debtor's chapter 13 plan is to report the outstanding
15 balance amount as of the date of filing.
- 16 74. Pre confirmation the accepted credit reporting standard for accurately and completely
17 reporting a scheduled monthly payment amount is to report the contractual monthly
18 payment amount.
- 19 75. Pre confirmation the accepted credit reporting standard for accurately and completely
20 reporting a past due balance is to report the past due amount as of the time the petition
21 was filed.
- 22 76. Pre confirmation the accepted credit reporting standard for accurately and completely
23 reporting ongoing payments is to report the Metro 2 indicator D in Field 18 which
24 means no payment history available this month.
- 25 77. Within the credit reporting industry, the Metro 2 indicator D is seen as accurately and
26 completely illustrating that the automatic stay of the bankruptcy is preventing ongoing
27 collection activities against the debtor and creditors are not anticipating receiving
28 payments directly from the debtor. The Metro 2 indicator D thus simultaneously
 illustrates to those making credit decisions that payments were NOT made and received
 but also NOT anticipated.

1 78. Deviation from the aforementioned credit reporting industry standards shall result in a
2 more negative inference being drawn with respect to a consumer's credit worthiness.

3 **Post Confirmation Credit Reporting Standards Regarding Balances and**
4 **Ongoing Payments When All Borrowers File Chapter 13**

5 79. Certain credit reporting standards exist on how to accurately and completely report
6 balances and past due balances post plan confirmation.

7 80. Post confirmation the accepted accurate credit reporting standard for reporting balances
8 is to report the balance owed under the Chapter 13 plan terms. The balance should
decrease with payments made.

9 81. If the plan does not call for payments to be made on a particular debt the accurate credit
10 reporting standard is to report a \$0.00 balance.

11 82. Post confirmation the accepted accurate credit reporting standard for reporting past due
12 balances is to report a \$0.00 past due balance.

13 83. Post confirmation the accepted accurate credit reporting standard for monthly payments
14 is the Chapter 13 plan payment amount.

15 84. Post confirmation the accepted accurate credit reporting standard for payment history is
16 to report the Metro 2 indicator D each month. Reporting ongoing past due amounts and
17 ongoing late payments are not generally accepted as accurate by the credit reporting
industry.

18 85. Plaintiff alleges that the aforementioned industry standards are all readily available in
19 the CRRG which each and every Defendant subscribes thereto.

20 86. The CDIA and credit reporting industry recognize that allowing Creditors to
21 continuously report on going delinquencies and past due balances post confirmation
22 would objectively make filing Chapter 13 and repaying Creditors exponentially worse
23 for a consumer's credit worthiness as opposed to filing Chapter 7. Thus, deviation
24 from the aforementioned credit reporting industry standards shall result in a more
25 negative inference being drawn with respect to a consumer's credit worthiness.

26 **Plaintiffs Bankruptcy Filing**

27 87. Prior to filing Chapter 13, Plaintiff pulled a credit report on May 16, 2012 to ensure all
outstanding debt was properly listed and scheduled in Plaintiff's petition.

28 88. The credit report was pulled from a third party vendor CIN Legal Data Services.

1 89. Plaintiff alleges that all the information contained within the May 16, 2012 CIN report
2 was compiled by information gathered by CIN directly from the three major CRAs-
3 Experian Information Solutions, Inc.; Equifax, Inc. and Trans Union, LLC.

4 90. The CIN report contained within it Plaintiff's estimated credit score of 534 based on the
5 information provided by the CRAs.

6 91. The CIN report also estimated Plaintiff's 12-month post-bankruptcy credit score at 650.

7 92. Plaintiff alleges such scores were based on anticipated accurate credit reporting
8 industry standards.

9 93. Plaintiff filed for Chapter 13 bankruptcy protection on August 29, 2012 in order to
10 reorganize and repair Plaintiff's credit worthiness and FICO Score.

11 94. Chapter 13 of the Bankruptcy Code is titled "Adjustment of Debts of an Individual with
12 Regular Income."

13 95. Chapter 13 allows financially overextended individual debtors to make greater
14 voluntary use of repayment plans commensurate with each debtor's abilities, as the
15 most effective means of improving, first, debtor relief, and second creditor recoveries.

16 96. Whether a debtor uses Chapter 7, Liquidation, or Chapter 13, Adjustments of Debts of
17 an individual, congress intended bankruptcy relief be effective and should provide the
18 Debtor with a fresh start.

19 97. Post filing, Defendants would not accept payments directly from Plaintiff.

20 98. Post filing, Defendants were not anticipating receiving payments directly from Plaintiff.

21 99. Under the terms of the confirmed Chapter 13 plan, unsecured Creditors are allowed a
22 .24% disbursement of their filed claims over the course of Plaintiff's plan.

23 100. Plaintiff's plan was confirmed on December 19, 2012.

24 101. Once confirmed the plan became a final judgment with respect to the party's rights and
25 liabilities.

26 102. The res judicata effect of confirmation may be eliminated only if confirmation is
27 revoked or if the case is dismissed.

28 103. Confirmation of a plan prohibits actions by creditors inconsistent with the plan.

104. While confirmation of a plan is not a discharge it does fix the terms upon which claims
are to be settled and both a confirmation order and discharge order are final orders.

105. The CDIA recognizes the finality of confirmation orders and the aforementioned credit
2 reporting industry guidelines are specifically setup to harmonize the bankruptcy code
3 and credit reporting guidelines.

4 106. Federal Rules of Bankruptcy Procedure (“FRBP”) 3004 and 3021 mandate that
distributions to creditors are on allowed claims only.

5 107. A proof of claim must be filed in order for a claim to be allowed. 11 U.S.C §502(a).

6 108. Thus failure to file a proof of claim results in zero distributions to a creditor through the
7 plan.

8 109. In the case of an unsecured non priority claim failure to file a proof of claim sets the
9 terms of repayment at \$0.00 owed.

10 110. Item 1 of the official Proof of Claim form promulgated by the Supreme Court does not
acknowledge past due amounts on unsecured debts. The same proof of claim form,
12 however, specifically asks for and requires a secured creditor to list the arrearage/past
13 due amounts on a secured claim in item 4.

14 111. On April 11, 2016 Plaintiff ordered a three bureau report from Experian Information
Solutions, Inc. to ensure proper reporting by Plaintiff’s Creditors.

15 112. Plaintiff noticed 5 different trade lines on the April 11, 2016 credit report all reporting
inaccurate, misleading, or incomplete information that did not comport with credit
17 reporting industry standards. Specifically, multiple trade lines continued to report
18 Plaintiff’s accounts with past due balances, inaccurate balances, inaccurate monthly
19 payments owed, in collections, and/or charged off. Some accounts even failed to
20 register that Plaintiff was making payments on the account through Plaintiff’s Chapter
21 13 plan.

22 113. In response, Plaintiff disputed the inaccurate tradelines via certified mail with Experian
Information Solutions, Inc.; Equifax, Inc.; and TransUnion, LLC on September 13,
23 2016.

24 114. Plaintiff’s dispute letter specifically put each Creditor on notice that Plaintiff had filed
for bankruptcy and the account was not reporting the bankruptcy accurately or worse
26 not at all. Plaintiff specifically requested each Creditor investigate the proper way to
27 report Plaintiff’s bankruptcy. Plaintiff noted that there should not be any past due
28 balance reported, the account should not be listed as charged off, transferred or sold,

1 with an inaccurate monthly payment or that the account is in collections. There should
2 not be any late payments reported after Plaintiff's case was filed and to ensure that the
3 proper monthly payment was being reported. Last, Plaintiff noted that under *Gorman*
4 *v. Wolpoff & Abramson*, Plaintiff expected the accounts to be reported disputed if the
5 Creditor disagreed with Plaintiff's dispute.

6 115. Plaintiff is informed and believes that each CRA received Plaintiff's dispute letter and
7 in response sent Plaintiff's dispute to each DF via an ACDV through e-OSCAR.

8 116. On October 24, 2016 Plaintiff ordered a second credit report from Experian Information
9 Solutions, Inc.; Equifax, Inc. and TransUnion, LLC to ensure Plaintiff's accounts had
10 been updated.

11 117. It was now over four years since Plaintiff filed for bankruptcy and Plaintiff's credit
12 score was well below what accurate credit reporting industry standards would project.

13 118. Defendant First Data Merchant Services, LLC was reporting Plaintiff's account,
14 beginning in 5204xxxx, as in collections, charged off, with a balance in the amount of
15 \$1,470.00, and with a past due balance in the amount of \$1,470.00, despite the Court
16 Ordered treatment of its claim under the terms of Plaintiff's Chapter 13 plan of
17 reorganization.

18 119. The terms of the plan show that this claim is to be treated as an unsecured debt. Per the
19 terms of plan, unsecured creditors were to be paid .24% of their claims. Debtor has
20 performed and made all required payments under the terms of the plan as to Defendant

21 120. This claim was disallowed under 11 U.S.C. Section 501 and 502 due to Defendant
22 negligently failing to file a proof of claim. Consequently, the trustee is not making
23 payment to Defendant. All payments currently owed to Defendant have been made and
24 Defendant is currently owed \$0.00. Assuming Defendant did file a claim, the account
25 statuses of in collection and charged off that are being reporting is inaccurate and would
26 not comport with Metro 2 industry standards.

27 121. Defendant is not comporting with industry standards and is not listing the correct CII
28 indicator. CII should have been updated to D instead kept as charged off and/or in
collections. To be clear, NOTHING about this trade line indicates the account is subject

1 to Plaintiff's Chapter 13. Instead, lender shall think Plaintiff may be subject to levies
2 and garnishments. This is not true.

3 122. In addition to the aforementioned inaccuracies, the balance and past due balance listed
4 by Defendant do not comport with Metro 2 industry standards.

5 123. Based on Plaintiff's dispute, Defendant should have known the account was included in
6 Plaintiff's Chapter 13 plan of reorganization and being reporting incorrectly. The most
7 basic investigation would include a simple review of well-established credit reporting
8 industry standards.

9 124. Plaintiff alleges Defendant did not review well established industry standards for credit
10 reporting.

11 125. If Defendants had reviewed such standards Defendants would have seen their reporting
12 was not in compliance and consequently inaccurate and or incomplete.

13 126. Defendant TD Bank USA, National Association was reporting Plaintiff's account,
14 beginning in 4352xxxx, as in collections and charged off, despite the Court Ordered
15 treatment of its claim under the terms of Plaintiff's Chapter 13 plan of reorganization.

16 127. The terms of the plan show that this claim is to be treated as an unsecured debt. Per the
17 terms of plan, unsecured creditors were to be paid .24% of their claims. Debtor has
18 performed and made all required payments under the terms of the plan.

19 128. This claim was disallowed under 11 U.S.C. Section 501 and 502 due to Defendant
20 negligently failing to file a proof of claim. Consequently, the trustee is not making
21 payment to Defendant. All payments currently owed to Defendant have been made and
22 Defendant is currently owed \$0.00. Assuming Defendant did file a claim, the account
23 status' of in collection and charged off that are being reporting is inaccurate and would
24 not comport with Metro 2 industry standards.

25 129. Defendant is not comporting with industry standards and is not listing the correct CII
26 indicator. CII should have been updated to D instead kept as charged off and/or in
27 collections. To be clear TD Bank refuses to acknowledge that this account is subject to
28 Plaintiff's Chapter 13 plan. Instead TD Bank's reporting suggests that it may collect on
this account or garnish wages. This is not true!

1 130. If this wasn't troubling enough, Defendant is simultaneously reporting that the account
2 is current in the payment history, but the status shows that the account is in collections.
3 131. The actions of the Defendants as alleged herein are acts in violation of the Fair Credit
4 Reporting Act, 15 U.S.C. § 1681s-2(b).
5 132. The actions of the Defendants as alleged herein are acts in violation of the Consumer
6 Credit Reporting Agencies Act California Civil Code § 1785.25(a).

7 **FIRST CAUSE OF ACTION**

8 (Violation of Fair Credit Reporting Act 15 U.S.C. § 1681s-2(b))
Against Defendants and Does 1-100)

9 **First Data Merchant Services, LLC and TD Bank USA, National Association –Failure
10 to Reinvestigate.**

11 133. Plaintiff realleges and incorporates herein the allegation in each and every paragraph
12 above as though fully set forth herein.
13 134. 15 USC 1681s-2(b) and 15 USC 1681i-(a)1 prohibits furnishers from providing any
14 information relating to a consumer to any consumer reporting agency if the person knows
15 or has reasonable cause to believe that the information is inaccurate or misleading and
16 requires a furnisher to update and or correct inaccurate information after being notified
17 by a consumer reporting agency of a dispute by a consumer.
18 135. Defendants First Data Merchant Services, LLC and TD Bank USA, National Association
19 violated section 1681s-2(b) by failing to conduct a reasonable investigation and re-
20 reporting misleading and inaccurate account information.
21 136. The CRAs provided notice to the Defendants that Plaintiff was disputing the inaccurate
22 and misleading information but First Data Merchant Services, LLC and TD Bank USA,
23 National Association failed to conduct a reasonable investigation of the information as
24 required by the FCRA.
25 137. Based on Plaintiff's dispute, Defendants should have known their accounts were included
26 in Plaintiff's Chapter 13 plan of reorganization. The most basic investigation would
27 include a simple review of well-established credit reporting industry standards.
28 138. Plaintiff alleges Defendants did not review well established industry standards for credit
reporting.

1 139. If Defendants had reviewed such standards Defendants would have seen their reporting
2 was not in compliance and consequently inaccurate and or incomplete.

3 140. Such an investigation would be unreasonable.

4 141. Plaintiff also alleges that Defendants did not investigate whether Plaintiff filed for
5 bankruptcy, whether their accounts were included, the terms of the plan, or whether or
6 not the terms had been approved.

7 142. The lack of investigation is unreasonable.

TransUnion, LLC and Equifax, Inc. – Failure to Reinvestigate Disputed Information.

8 143. Plaintiff realleges and incorporates herein the allegation in each and every paragraph
9 above as though fully set forth herein.

10 144. After Plaintiff disputed the accounts mentioned above, each CRA was required to
11 conduct a reasonable investigation and to delete any information that was not accurate
12 under 15 USC 1681i-(a)1.

13 145. The most basic investigation required each CRA to send all relevant information via
14 an ACDV to the furnishers which they did not do.

15 146. Thus the CRAs failed to conduct a reasonable investigation and failed to correct the
16 misleading and or inaccurate statements on the account within the statutory time
17 frame or at all.

18 147. In the alternative Plaintiff alleges that each CRA has its own independent duty to
19 conduct a reasonable investigation 15 USC 1681i-(a)1.

20 148. Each CRA is not a passive entity bound to report whatever information a DF
21 provides.

22 149. Plaintiff alleges that each CRA is readily familiar with Metro 2 guidelines and credit
23 reporting industry standards.

24 150. **In fact, each CRA sponsors and authorizes workshops hosted by the CDIA that**
teach the following to DFs:

25 a. Do not report delinquencies post petition pre discharge in the payment history
26 section regardless of Chapter 7 or Chapter 13. Instead report the Metro 2
27 indicator D.

28 b. In Chapter 13 cases do not report past due balances post confirmation.

- 1 c. In Chapter 13 cases do not report balances that are inconsistent with the terms
- 2 of the Chapter 13 plan.
- 3 d. In Chapter 13 cases do not report monthly payments that are inconsistent with
- 4 the terms of the Chapter 13 plan.
- 5 e. The above reporting is the correct and accurate way to report debts included in
- 6 consumer bankruptcy filings.

151. Given the aforementioned, Plaintiff alleges that each CRA can and does suppress

152. inaccurate information from being reported when DFs provide inaccurate

153. information.

154. Each CRA can and does instruct DFs on how to properly report certain accounts from

155. time to time upon request from the DF.

156. Each CRA failed to conduct a reasonable investigation because any basic

157. investigation would have uncovered that certain DFs were not following credit

158. reporting industry standards.

159. Each CRA would have known that Plaintiff filed for Chapter 13 based on multiple

160. other accounts reporting as much.

161. Each CRA would have known that Plaintiff's plan had been confirmed based on

162. multiple other accounts reporting as much.

163. Each CRA would have known that failure to report a CII given that a Chapter 13 was

164. filed did not comport with industry standards.

165. Each CRA would have known reporting a past due balance post confirmation does

166. not comport with industry standards.

167. Each CRA therefore did not do the most basic investigation regarding credit reporting

168. industry standards otherwise the aforementioned would have been uncovered.

169

170 **SECOND CAUSE OF ACTION**

171 (Violation of California Consumer Credit Reporting Agencies Act
172 California Civil Code § 1785.25(a) Against Defendants and Does 1-100)

173 **First Data Merchant Services, LLC and TD Bank USA, National Association –**
174 **Reporting Inaccurate Information to CRAs.**

1 159. Plaintiff realleges and incorporates herein the allegation in each and every paragraph
2 above as though fully set forth herein.

3 160. In the regular course of its business operations, Defendants routinely furnish
4 information to credit reporting agencies pertaining to transactions between Defendants
5 and Defendant's consumers, so as to provide information to a consumer's credit
6 worthiness, credit standing and credit capacity.

7 161. Defendants intentionally and knowingly reported misleading and inaccurate account
8 information to the CRAs that did not comport with well-established industry standards.

9 162. Plaintiff alleges that Defendants re-reported the information contained herein in
10 violation of California Civil Code § 1785.25(a).

11 163. Plaintiff also alleges that Defendants had reason to know that the information reported
12 on Plaintiff's accounts were misleading, inaccurate, incomplete, and did not comport
13 with well-established credit reporting industry standards.

14 164. Plaintiff alleges that Defendants had reason to know that by not comporting with well-
15 established industry standards lenders will draw a more negative inference with respect
16 to Plaintiff's credit worthiness.

17 165. Plaintiff alleges that the bankruptcy notices, disputes letters from all three credit
18 reporting agencies, the consumer data industry resource guide, and results of its
19 investigation should have provided notice to Defendants of its misleading and
20 inaccurate reporting as well as being noticed of the plan confirmation and proof of
21 claim forms sent by the U.S. Bankruptcy Court.

22 166. Defendants failed to notify TransUnion, LLC and Equifax, Inc. that the information
23 Defendants re-reported was inaccurate before the end of 30 business days, in violation
24 of California Civil Code § 1785.25(a).

25 167. Defendants' communications of false information, and repeated failures to investigate,
26 and correct their inaccurate information and erroneous reporting were done knowingly,
27 intentionally, and in reckless disregard for their duties and Plaintiff's rights.

28 168. As a direct and proximate result of Defendants' willful and untrue communications,
Plaintiff has suffered actual damages including but not limited to inability to properly
reorganize under Chapter 13, reviewing credit reports from all three consumer reporting

1 agencies, time reviewing reports with counsel, sending demand letters, diminished
2 credit score, and such further expenses in an amount to be determined at trial.

3
4 Wherefore, Plaintiff prays for judgment as hereinafter set forth.

5
6 **PRAYER FOR RELIEF**
7

8 WHEREFORE, Plaintiff prays for judgment as follows:
9

10 1. For preliminary and permanent injunctive relief to stop Defendants from
11 engaging in the conduct described above;
12 2. Award statutory and actual damages pursuant to 15 U.S.C. § 1681n and
13 California Civil Code § 1785.31;
14 3. Award punitive damages in order to deter further unlawful conduct pursuant to
15 15 U.S.C. § 1681n; and California Civil Code § 1785.31
16 4. Award attorney's fees and costs of suit incurred herein pursuant to 15 U.S.C. §
17 1681n & o; California Civil Code § 1785.31;
18 5. For determination by the Court that Creditor's policies and practices are
19 unlawful and in willful violation of 15 U.S.C. § 1681n, et seq.; and
20 6. For determination by the Court that Creditor's policies and practices are
21 unlawful and in negligent violation of 15 U.S.C. § 1681o;
22

23 Dated: January 26, 2017

SAGARIA LAW, P.C.

/s/ Elliot Gale, Esq.

Scott Sagaria, Esq.

Elliot Gale, Esq.

Attorneys for Plaintiff

24
25 **DEMAND FOR JURY TRIAL**
26

27 Plaintiff hereby demands trial of this matter by jury.
28

Dated: January 26, 2017

SAGARIA LAW, P.C.

/s/ Elliot Gale, Esq.

Scott Sagaria, Esq.

Elliot Gale, Esq.

1 Attorneys for Plaintiff
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28